



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Spare Parts, Inc.

File: B-224745

Date: January 2, 1987

DIGEST

Bidder's failure to furnish a schedule of price lists for vehicle parts should not have rendered bid nonresponsive, since schedule was not relevant to bid evaluation and failure did not affect bidder's promise to perform as specified.

DECISION

American Spare Parts, Inc., protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. F03602-86-B-0022, issued by Little Rock Air Force Base, Arkansas, for a contractor-operated vehicle parts store. American's bid was rejected because it did not include a complete schedule of price lists to be used in contract performance. The protester argues that this failure was an immaterial defect in that it had no impact on the firm's obligation to provide the items required.

We sustain the protest.

The IFB provided government dollar estimates of (1) annual anticipated requirements for vehicle parts based on previous year expenditures for price-listed parts (parts covered by price lists published by the manufacturer of the product or a national distribution organization that sells the items to the public under its own brand name), and (2) the actual price of nonprice-listed parts. Four types of price-listed parts were requested: automobile, truck and bus original equipment manufacturer parts for 7 manufacturers; special purpose vehicles original equipment manufacturer parts for the brands selected by the bidder out of a list of 18 manufacturers; rebuilt parts; and aftermarket (new or obtainable from sources other than the manufacturer) parts.

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The bidder was to insert the discounts it would provide from the prices on the price lists to be used in performing the contract. The discounts proposed by the bidder were to remain firm throughout the base period of the contract, regardless of variations in the price lists, of manufacturers' revisions or supplements to those price lists, or of changes in Air Force vehicle and equipment inventory. The bidder also was required to calculate a net amount for each item by applying the discount to the government estimate. According to IFB Section M, Evaluation Factors for Award, the evaluation of bids was to be based on the net amount of the discounts offered as applied to the IFB's dollar estimates for price-listed parts, plus the estimates for nonprice-listed parts. The IFB specifically noted in its procedure for determining net amount that:

"Any numerical figure . . . inserted in the discount block for a brand will be considered a bid for that brand and will indicate the bidder will provide price list coverage for that brand."

Section L-37 of the solicitation required that a schedule of the price lists proposed for use under the contract be furnished by a proposed contractor with its bid.^{1/} Part of the first line of section L-37(f) was omitted and should have read: ["FAILURE TO FURNISH PRICE LISTS: Failure to furnish the listing of price lists required by] paragraphs a through d, above, concurrently with the bid shall be a cause for rejection of the bid as nonresponsive." The IFB also stated in that section:

". . . the Government will require the apparent low bidder to furnish a complete set of price lists proposed for use in the resultant contract. Failure to furnish all price lists within ten (10) work days after the receipt of the request shall be cause for rejection as nonresponsive."

Also, section M indicated that the Air Force's determination of bid responsiveness would include an evaluation of whether a bidder's schedule of price lists met the mandatory requirements of section L-37.

^{1/} While the sections of the IFB requesting original equipment manufacturer parts listed the manufacturers, the bidder otherwise could furnish any number of price lists for a specific part.

The Air Force received seven bids in response to the IFB. American was the low bidder. On the schedule of price lists submitted with its bid, American did not include any price lists for the automobile, truck and bus original equipment manufacturer parts, and included one price list for the special purpose vehicles' original equipment manufacturer parts, 7 price lists out of the 10 requested for individual rebuilt parts, and 11 price lists for the 23 aftermarket parts.

The schedule of price lists furnished with the bid of the apparent second low bidder, whose bid the Air Force apparently considered responsive, simply repeated the solicitation's list of original equipment manufacturers for automobile, truck, bus and special purpose vehicles and noted price list dates. For individual rebuilt and aftermarket parts, that bidder furnished a list of 28 and 117 suppliers, respectively, noting, e.g., 13 different suppliers of rebuilt water pumps and 13 different suppliers of aftermarket fuel pumps. That bidder also used the abbreviation "etc." to indicate other items covered on a particular price list.

After examining the bids, the Air Force concluded that since American's bid failed to include a complete, signed schedule of price lists, the contracting officer could not determine if American was unequivocally offering to provide the required items and therefore American's bid was nonresponsive. American, however, protests that the failure to include a complete schedule of price lists was an immaterial defect in that the IFB unequivocally required bidders to provide the actual price lists and the items required. We agree with American.

Responsiveness deals with a bidder's unequivocal promise, as shown on the face of its bid, to provide the items or services called for by the material terms of the IFB. A-1 Pure Ice Co., B-215215, Sept. 25, 1984, 84-2 C.P.D. ¶ 357. Material terms of a solicitation are those which affect the price, quantity, quality, or delivery of the goods or services offered, Mobile Drilling Co., Inc., B-216989, Feb. 14, 1985, 85-1 C.P.D. ¶ 199, and the regulations authorize rejection of any bid that fails to conform to them. Federal Acquisition Regulation, 48 C.F.R. § 14.404-2(a) (1985). A solicitation requirement is not material, however, simply because bidders are warned that bids will be rejected should they fail to furnish information, if the government does not need the information in order to evaluate bids or the information otherwise does not have an impact on the bidder's promise to perform as specified. Sulzer Bros., Inc., et al., B-188148, Aug. 11, 1977, 77-2 C.P.D. ¶ 112.

We think American's bid should not have been rejected as nonresponsive. As indicated above, the schedule of price lists had nothing to do with the evaluation of bids, which was based on discounts applied to stated estimated dollar values; indeed, even the price lists themselves thus were irrelevant in this regard.

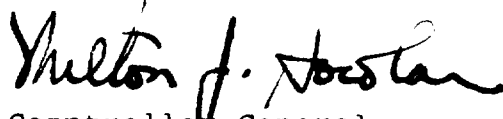
We also do not see how the schedule had any impact on the bidder's obligation to perform, i.e., to supply the requisite vehicle parts at promised prices. The IFB was clear that a firm's insertion of a discount obligated the bidder to provide price list coverage for that item, and to bill the Air Force based on prices in effect at the time the vehicle parts were ordered, less the discount.

Finally, the bidder, before award, clearly would have to furnish the actual lists specifically required by the IFB or otherwise promised by the bidder's discount entry, within 10 days after being requested to do so, irrespective of whether any schedule of those lists earlier had been submitted.

In sum, the schedule of price lists had no impact on bid evaluation, the bidder's promise to furnish the price lists themselves, or the bidder's promise to furnish parts at their list prices less discount. Although the Air Force, for reference purposes, may have wanted the bidder to furnish with the bid a schedule of the price lists that would be provided when requested, the requirement in that regard simply was not a matter of bid responsiveness.

We therefore conclude that American's submission of an incomplete schedule of price lists should not have caused the rejection of the bid. By letter of today to the Secretary of the Air Force, we are recommending that the Air Force permit American to submit the omitted sections of the schedule, and that the agency accept American's bid, if otherwise proper.

The protest is sustained.



Acting Comptroller General
of the United States